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8 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

9 In the Matter of

10 **THOMAS BRANSON**

11 Holder of License No. 4208
12 For the Practice of Pharmacy
13 In the State of Arizona

**CONSENT AGREEMENT
FOR PROBATION
ORDER No. 07-0032-PHR**

14 **RECITALS**

15 In the interest of a prompt and judicious settlement of this case, consistent with the
16 public interest, statutory requirements and the responsibilities of the Arizona State Board
17 of Pharmacy ("Board") and under A.R.S. §§ 32 1901, *et. seq.* and 41 1092.07(F)(5),
18 Thomas Branson ("Respondent"), holder of Pharmacist License Number 4208 in the
19 State of Arizona, and the Board enter into the following Recitals, Findings of Fact,
20 Conclusions of Law and Order ("Consent Agreement") as a final disposition of this
21 matter.

22 1. Respondent has read and understands this Consent Agreement and has had
23 the opportunity to discuss this Consent Agreement with an attorney, or has waived the
24 opportunity to discuss this Consent Agreement with an attorney.
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26

1 2. Respondent understands that he has a right to a public administrative
2 hearing concerning the above-captioned matter, at which hearing he could present
3 evidence and cross examine witnesses. By entering into this Consent Agreement,
4 Respondent knowingly and voluntarily relinquishes all rights to such an administrative
5 hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or
6 any other administrative and/or judicial action, concerning the matters set forth herein.

7 3. Respondent affirmatively agrees that this Consent Agreement shall be
8 irrevocable.

9 4. Respondent understands that this Consent Agreement or any part of the
10 agreement may be considered in any future disciplinary action by the Board against him.

11 5. Respondent understands this Consent Agreement deals with Board Case
12 No. 3241 involving allegations of unprofessional conduct against Respondent. The
13 investigation into these allegations against Respondent shall be concluded upon the
14 Board's adoption of this Consent Agreement.

15 6. Respondent understands that this Consent Agreement does not constitute a
16 dismissal or resolution of any other matters currently pending before the Board, if any,
17 and does not constitute any waiver, express or implied, of the Board's statutory authority
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19 7. Respondent also understands that acceptance of this Consent Agreement
20 does not preclude any other agency, subdivision, or officer of this State from instituting
21 any other civil or criminal proceedings with respect to the conduct that is the subject of
22 this Consent Agreement.

23 8. All admissions made by the Respondent in this Consent Agreement are
24 made solely for the final disposition of this matter, and any related administrative pro-
25 ceedings or civil litigation involving the Board and Respondent. Therefore, any admis-
26

1 sions made by Respondent in this Consent Agreement are not intended for any other use,
2 such as in the context of another regulatory agency's proceedings, or civil or criminal
3 proceedings, whether in the State of Arizona or in any other state or federal court.

4 9. Respondent acknowledges and agrees that, upon signing this Consent
5 Agreement and returning this document to the Board's Executive Director, he may not
6 revoke his acceptance of the Consent Agreement or make any modifications to the
7 document regardless of whether the Consent Agreement has been signed by the Execu-
8 tive Director. Any modification to this original document is ineffective and void unless
9 mutually agreed by the parties in writing.

10 10. Respondent understands that the Consent Agreement shall not become
11 effective unless and until adopted by the Board and signed by its Executive Director.

12 11. If a court of competent jurisdiction rules that any part of this Consent
13 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
14 shall remain in full force and effect.

15 12. Respondent understands and agrees that if the Board does not adopt this
16 Consent Agreement, he will not assert as a defense that the Board's consideration of this
17 Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

18 13. Respondent understands that this Consent Agreement is a public record that
19 may be publicly disseminated as a formal action of the Board and may be reported as
20 required by law to the National Practitioner Data Bank and the Healthcare Integrity and
21 Protection Data Bank.

22 14. Respondent understands that any violation of this Consent Agreement
23 constitutes unprofessional conduct and may result in disciplinary action. A.R.S. §§ 32-
24 1901.01(B)(20), -1927(A)(1).

1 ACCEPTED AND AGREED BY RESPONDENT

2 Thomas Branson
3 Thomas Branson

Dated: Jan. 15, 07

4 Subscribed and sworn to before me in the County of Pima, State of Arizona,
5 this 15th day of Jan., 2007, by Thomas Branson.



6
7 OFFICIAL SEAL
8 EDITH F. CARGILL
9 NOTARY PUBLIC - State of Arizona
PIMA COUNTY
My Comm. Expires Oct. 5, 2007

NOTARY PUBLIC

My Commission expires: 10/5/07

10
11 **FINDINGS OF FACT**

12 1. The Arizona State Board of Pharmacy ("Board") is the duly constituted
13 authority for licensing and regulating the practice of pharmacy in the State of Arizona.

14 2. Thomas Branson ("Respondent") is the holder of license number 3217
15 to practice as a pharmacist in the State of Arizona.

16 3. On or about August 9, 2006, Board staff received a complaint from an
17 Area Coordinator for Encompass, a Developmentally Disabled Treatment Facility in Ajo,
18 Arizona, that an error was made in the filling of a prescription for one of their patients.

19 4. The prescription was for Sodium Bicarbonate Tablets 650mg., #120,
20 but was short counted, #113, contained broken tablets, and a foreign tablet of
21 Hydroxyzine 25mg mix in the prescription bottle with the other tablets.

22 5. The Hydroxyzine tablets are stored on a different shelf than
23 Sodium Bicarbonate Tablets and no prescriptions for Hydroxyzine tablets were filled that
24 same day.

1 6. The complainant also informed board staff of several other incidents
2 with Respondent and Respondent's pharmacy, but that had never been reported to the
3 Board.

4 7. Respondent also was not documenting when patient's were getting
5 "easy-open" caps as required, but was documenting when he was dispensing
6 prescriptions in "safety" caps instead. Cost of the "safety caps seemed to be a factor for
7 his dispensing everything in "easy-open" caps.

8 8. Complainant also states that when mistakes are called to Respondent's
9 attention, Respondent will respond by asking them to leave his store.

10 CONCLUSIONS OF LAW

11 1. The Board possesses jurisdiction over the subject matter and over
12 Respondent pursuant to A.R.S. § 32-1901 *et seq.*

13 2. The Board may discipline a pharmacist who has engaged in unprofessional
14 conduct. A.R.S. § 32-1927(A)(1).

15 3. The conduct and circumstances described above constitutes unprofessional
16 conduct pursuant to A.R.S. § 32-1901.01(B)(2) ("Violating any federal or state law, rule
17 or regulation relating to the manufacture or distribution of drugs and devices or the
18 practice of pharmacy.").

19 4. The conduct and circumstances described above constitutes unprofessional
20 conduct pursuant to A.R.S. § 32-1901.01(B)(19) ("Violating or attempting to violate,
21 directly or indirectly, or assisting in or abetting in the violation of, or conspiring to
22 violate, this chapter."), and A.A.C. R4(A)(10)(11) ("A pharmacist or a graduate intern or
23 pharmacy intern under the supervision of a pharmacist shall perform the following
24 professional practices in dispensing a prescription medication from a prescription order:
25 Check a prescription label to ensure that it communicates the prescriber's directions
26

1 precisely and make a final accuracy check on the completed prescription medication and
2 manually initial the finished label.”).

3 ORDER

4 Based upon the above Findings of Fact and Conclusions of Law and under the
5 authority granted to the Board by A.R.S. §§ 32-1928, 41-1092.07(F)(5), and A.A.C. R4-
6 23-122 (c), IT IS HEREBY ORDERED THAT License No. 4208, which was issued to
7 Thomas Branson to practice as a Pharmacist in the State of Arizona, is hereby placed on
8 PROBATION for a period of two (2) years. During the term of PROBATION,
9 Respondent shall complete the following terms and conditions:

- 10 a. Respondent shall not engage in the practice of pharmacy without
11 having another pharmacist on site review and verify all prescriptions
12 filled by Respondent for accuracy as well as for compliance with
13 state and federal legal requirements. The pharmacist employed by
14 Respondent shall first be approved by the Executive Director.
15 Respondent shall bear all costs associated with recruiting and
16 employing a second pharmacist.
- 17 b. Inspections shall be performed, at Respondent’s expense, of
18 Respondent’s pharmacy and pharmacy practices no less than twice
19 per year. (A.R.S. § 32-1939)
- 20 c. Respondent shall submit progress reports to the Board from himself
21 as well as from the other pharmacist at least every other month
22 regarding his pharmacy practice. These reports shall be reviewed at
23 the next regularly scheduled board meeting.
- 24 d. Respondent shall advise the Board immediately of any change in
25 pharmacy employment status throughout the term of his probation.
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- 1 e. Respondent shall furnish the Board with a list of all jurisdictions in
2 which he maintains or has maintained licensure in the profession of
3 pharmacy along with the registration numbers of said licenses.
4 f. Respondent shall obey all federal and state laws and rules governing
5 the practice of pharmacy.
6 g. Respondent shall appear before the Board at a regularly scheduled
7 meeting after the terms of probation are met to request that the
8 probation imposed by this Order be terminated. Respondent's failure
9 to petition the Board to terminate the probation shall extend the
10 probation period.

11 DATED this 14th day of FEBRUARY, 2007.

12 ARIZONA STATE BOARD OF PHARMACY

13 (Seal)
14

15 By: 
16

17 HAL WAND, R.Ph.
18 Executive Director
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1 ORIGINAL OF THE FORGOING FILED
this 14 day of FEB., 2007, with:

2 Arizona State Board of Pharmacy
3 4425 W. Olive Avenue, Suite 140
4 Glendale, Arizona 85302

5 EXECUTED COPY OF THE FOREGOING MAILED
BY REGULAR MAIL
this 14 day of FEB., 2007, to:

6 Thomas Branson
7 P.O. Box 87
8 Ajo, Arizona 85321

9 486161